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QUESTION OF THE REALIZATION IN ALL COUNTRIES OF THE ECONOMIC, SOCIAL AND CULTURAL RIGHTS CONTAINED IN THE UNIVERSAL DECLARATION OF HUMAN RIGHTS AND IN THE INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS, AND STUDY OF SPECIAL PROBLEMS WHICH THE DEVELOPING COUNTRIES FACE IN THEIR EFFORTS TO ACHIEVE THESE HUMAN RIGHTS:

Adverse effects of the illicit movement and dumping of toxic and dangerous products and wastes on the enjoyment of human rights

Progress report submitted by Mrs. Fatma Zohra Ksentini, Special Rapporteur, pursuant to Commission resolution 1996/14

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Introduction

1. At its fifty-first session, the Commission on Human Rights, aware of the growing practice of the dumping in African and other developing countries by transnational corporations and other enterprises from industrialized countries of hazardous and other wastes, adopted resolution 1995/81 in which it noted with grave concern that the increasing rate of illicit dumping of toxic and dangerous products and wastes in developing countries continues adversely to affect the human rights to life and health of individuals in those countries, and decided to appoint, for a three-year period, a special rapporteur with a mandate to:

(a) Investigate and examine the effects of the illicit dumping of toxic and dangerous products and wastes in African and other developing countries on the enjoyment of human rights, in particular on the human rights to life and health of everyone;

(b) Investigate, monitor, examine and receive communications and gather information on the illicit traffic and dumping of toxic and dangerous products and wastes in African and other developing countries;

(c) Make recommendations and proposals on adequate measures to control, reduce and eradicate the illicit traffic in, transfer to and dumping of toxic and dangerous products and wastes in African and other developing countries;

(d) Produce annually a list of the countries and transnational corporations engaged in the illicit dumping of toxic and dangerous products and wastes in African and other developing countries and a census of human persons killed, maimed or otherwise injured in the developing countries through this heinous act.

The Commission requested the Special Rapporteur to submit her findings, including the list referred to in (d) above, to the Commission at its fifty-second session.

2. By its decision 1995/288 of 25 July 1995, the Economic and Social Council endorsed Commission resolution 1995/81.

3. The Chairman of the fifty-first session of the Commission on Human Rights, after consultation with the members of the Bureau, appointed Mrs. Fatma Zohra Ksentini (Algeria) as Special Rapporteur on the adverse effects of the illicit movement and dumping of toxic and dangerous products and wastes on the enjoyment of human rights.

4. In its resolution, the Commission urged the international community to give the necessary support to developing countries, upon their request, in their efforts to implement the provisions of existing international and regional instruments governing the transboundary movement and dumping of toxic and dangerous products and wastes in order to protect and promote the human rights to life and good health of all. The Commission requested the Secretary-General to establish in the Centre for Human Rights a focal unit with the specific task of following up on the findings of the Special Rapporteur and other issues related to the adverse effects of the illicit movement and dumping of toxic and dangerous products and wastes on the

enjoyment of human rights. Furthermore, it urged all Governments, specialized agencies and non-governmental organizations to cooperate fully with the Special Rapporteur, in particular by providing information on the movement and dumping of toxic and dangerous products and wastes.

5. In accordance with resolution 1995/81, the Special Rapporteur submitted a preliminary report (E/CN.4/1996/17).

6. In its resolution 1996/14, the Commission took note of the preliminary report of the Special Rapporteur and in particular her preliminary conclusions and recommendations. The Commission reaffirmed that illicit traffic and dumping of toxic and dangerous products and wastes constituted a serious threat to the human rights of life and good health of every individual. It requested the Special Rapporteur to continue to undertake a global, multidisciplinary and comprehensive study of the phenomena and to include in her next report information on countries and enterprises engaged in the illicit traffic, as well as information on persons killed, maimed or injured in developing countries through this heinous act.

7. The Special Rapporteur submits the present progress report in accordance with resolution 1996/14.

I. MANDATE, WORKING METHODS AND ACTIVITIES OF THE SPECIAL RAPPORTEUR

A. Mandate

8. In her preliminary report, the Special Rapporteur presented her reflections upon and understanding of the mandate in general and the standards to which she will refer in carrying out her mandate. She indicated that the mandate established by Commission resolution 1995/81 is consistent with the special thematic procedures; the methodology applied would be similar to that followed by other thematic rapporteurs.

9. The Special Rapporteur considered that her mandate has three main components. The first consists in conducting a general survey of issues involving the human rights of the victims, with special emphasis on difficulties encountered by African and other developing countries, and in making recommendations and proposals on adequate measures to control, reduce and eradicate the problem. The second component consists in identifying, investigating and monitoring actual situations, specific incidents and individual cases, including allegations which may be forwarded to the Special Rapporteur. The third consists in producing annually a list of countries and transnational corporations engaged in the illicit traffic of toxic and dangerous products and wastes to developing countries.

10. In its resolution 1996/14, the Commission confirmed the three components of her mandate by requesting the Special Rapporteur:

(a) To continue to undertake a global, multidisciplinary and comprehensive study of existing problems and solutions to illicit traffic in, transfer to and dumping of toxic and dangerous products and wastes in African and other developing countries, with a view to making recommendations and proposals on adequate measures to control, reduce and eradicate these phenomena (para. 9);

(b) To include in her report to the Commission information on countries and enterprises, including transnational corporations, engaged in the illicit movement and dumping of toxic and dangerous products and wastes in African and other developing countries (para. 10);

(c) To include information on persons killed, maimed or otherwise injured in developing countries through this heinous act (para. 11).

B. Working methods

11. In her preliminary report, the Special Rapporteur indicated the method that would be followed in order to gather the information necessary for the fulfilment of her mandate. She also described the procedure to be adopted for considering communications in accordance with the practice developed in other thematic procedures.

12. Accordingly, on 30 August 1995, the Secretary-General sent a note verbale to Governments and letters to specialized agencies and non-governmental organizations transmitting the Special Rapporteur's request for relevant information in accordance with paragraph 11 of resolution 1995/81.

13. At the time of submission of the present report, replies had been received from the following Governments: Angola, Germany, Jordan, Nigeria, Philippines, Slovakia, United Kingdom of Great Britain and Northern Ireland. Responses were received from the following United Nations bodies and specialized agencies: Department for Policy Coordination and Sustainable Development, Department for Economic and Social Information and Policy Analysis, United Nations Conference on Trade and Development, United Nations Environment Programme, United Nations University, Food and Agriculture Organization of the United Nations, United Nations Educational, Scientific and Cultural Organization, World Health Organization, World Bank, United Nations Industrial Development Organization, International Atomic Energy Agency.

14. The following intergovernmental organizations also replied: League of Arab States, Organization for Economic Cooperation and Development.

15. Responses were received from the following non-governmental organizations: Canadian Association of Physicians for the Environment; Centro de Estudios Ambientales; Disaster Mitigation Institute; Greenpeace; Human Rights Advocates; International Confederation of Free Trade Unions; International Federation of Chemical, Energy and General Workers' Unions; International Indian Treaty Council; International Transport Workers' Federation; Laka Foundation; National Aboriginal and Islander Legal Service Secretariat; National Conservation Strategy (Coordinating) Agency; Natural Heritage Institute; Pesticide Action Network North America; Re-visioning New Mexico; Servicio Paz y Justicia en América Latina; Sierra Club Legal Defense Fund, Inc.; Students of TAO USA; World Survival Foundation, Inc.

16. The Secretariat of the Basel Convention provided the Special Rapporteur with important documentation as well as information on the implementation of the 1989 Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal.

17. On the basis of the information gathered from various sources, a summary of cases and incidents has been established. The Special Rapporteur received numerous reports and allegations concerning her mandate. Some of them referred to the issue of environmental degradation leading to violations of human rights. Others contained particular cases of alleged violations of human rights in connection with the illicit movement and dumping of toxic and dangerous products and wastes. The information was processed and the allegations sent to the Governments concerned deal exclusively with this phenomenon.

18. Given the specific nature of such communications, the Special Rapporteur decided to send the allegations both to the countries from which the illicit traffic allegedly originated and to targeted or victimized countries. In some cases, other Governments could be concerned (transit countries; country of origin of a transnational corporation).

19. General comments received from Governments are summarized in chapter II of the present report. Communications received by the Special Rapporteur are contained in chapter IV. Government replies will be reflected in an addendum to the present report.

20. The Special Rapporteur is aware of the fact that communications were addressed to Governments late in 1996 and that the Governments concerned were asked to provide a reply within a very short deadline. This late transmittal is principally due to staff movement linked to the reassignment of certain thematic procedures, including the mandate of the Special Rapporteur on toxic wastes, to another area of the secretariat of the Centre for Human Rights, in the framework of the transitional phase now in place pending the entry into force of the new structure of the Centre. However, the Special Rapporteur will reflect any other replies received after the submission of the present report in her next report to the fifty-fourth session of the Commission.

C. Activities

21. In her preliminary report, the Special Rapporteur indicated that she intends to establish a dialogue with Governments concerning allegations and prospective field missions with a view to assisting the Governments concerned in finding appropriate solutions to deal with the illicit traffic and dumping of toxic and dangerous products and wastes, especially in African and other developing countries. Accordingly, she will endeavour to undertake missions *in situ* to the five geopolitical regions to investigate allegations and to supplement information required to fulfil her mandate.

22. On 26 July 1996 the Special Rapporteur held at her own expense consultations with the Centre for Human Rights and discussed with the secretariat all the elements related to her mandate, including the possibility of undertaking missions *in situ* to some countries which were identified. In September, the Special Rapporteur was informed that the financial constraints facing the Centre for Human Rights could not permit field missions.

23. The Special Rapporteur visited Geneva from 10 to 16 December 1996 for consultations with the secretariat of the Centre for Human Rights and the Secretariat of the Basel Convention (ISBC). She also took this opportunity to hold consultations with some Geneva-based intergovernmental and non-governmental organizations on issues related to her mandate.

24. On 16 December 1996 the Special Rapporteur concluded her consultations with the secretariat of the Centre for Human Rights, reiterating her interest in undertaking field missions, to be included in her programme of work for 1997. Africa, being the main focus of her mandate, should be considered as a priority even though, considering recent trends in movements of toxic wastes, Eastern Europe would be equally advisable. Alternatively, the Special Rapporteur suggested Latin America or one of the countries where toxic wastes originate.

25. Consistent with resolution 1996/14 calling for consultation and cooperation with all relevant bodies, in particular the ISBC, on 13 December 1996 the Special Rapporteur met the Executive Secretary of the ISBC. During the consultations two main trends emerged: a certain degree of reluctance on behalf of countries to rely on the mechanism established by the Basel Convention concerning transmission of information related to accidents occurring during the transboundary movement and disposal of hazardous wastes and other wastes and on the measures undertaken to deal with them (art. 13.3 (f)) and a lack of active participation on behalf of industrializing countries. The Special Rapporteur showed her interest in the projects developed by the ISBC in the field of technical assistance as well as in the role that ISBC plays as a clearing-house mechanism.

II. SUMMARY OF GENERAL COMMENTS RECEIVED FROM GOVERNMENTS

26. Angola. In its reply the Government of Angola confirmed its interest in the Commission resolution, underlined the difficulties faced in controlling its maritime and riverine coasts which risk being transformed into dumping sites for toxic wastes, and finally requested technical assistance in order to implement an environmentally sound policy.

27. Germany. In its reply, the Government of Germany stated that since July 1995 Germany has been a Contracting Party to the Basel Convention. The Act implementing the Basel Convention, inter alia, stresses the duty to reimport illegal/unauthorized or impracticable shipments of hazardous wastes. Waste exporters required to notify must ensure financial security for their waste shipments and contribute to a solidarity fund which pays whenever a solvent operator with a duty to reimport cannot be found in time. A special unit - the Federal Environment Agency - has been set up to deal with transit permits and information exchange. Also, a special procedure has been established to notify, which ensures that the responsible authorities are informed of the notifications made; furthermore, transactions arranging the movements of wastes are subject to official authorization. Infringements of the above-mentioned laws are punished by the German Penal Code with up to 10 years' imprisonment.

28. Jordan. In its reply, the Government of Jordan reiterated its interest in protecting the environment as well as the safety and health of its citizens. It recalled some of the measures adopted in order to achieve this end such as the prohibition against dumping of foreign hazardous wastes within its borders as well as the attempts made to manage hazardous wastes in an environmentally sound manner. Finally, it called for the international community to support developing countries in the implementation of international and regional instruments on toxic wastes.

29. Nigeria. In its reply, the Government of Nigeria stressed the active role it has played in support of resolution 1995/81 as well as its strong belief that the illicit dumping of toxic wastes is a violation of the right to life and health. In fact, Nigeria was one of the African countries that suffered and still suffers from the illegal dumping of toxic and hazardous wastes, due to its limited experience and knowledge in dealing with hazardous and toxic wastes, most of which are deliberately labelled raw materials for certain industries. Some examples were given: in 1993/94, about 15 toxic chemicals and waste alerts were received from the Nigerian Dumpwatch Network; out of these, about 12 were purported requests by alleged Nigerian businessmen, while 3 were deliberate efforts by foreign companies to dump toxic wastes in the country. Reportedly, the new method employed by the latter group is to disguise toxic chemicals and waste products as raw materials that come under various labels. Furthermore, efforts have apparently also been made by toxic waste traders to dump in Nigeria milk products contaminated with radioactive chemicals. The Government of Nigeria made the following suggestions to control and eliminate the illicit dumping of toxic wastes:

(a) The Special Rapporteur should produce and circulate annually a list of the countries and multinational corporations engaged in the illicit dumping;

(b) There should be a study of the health effects of the illegal dumping of toxic wastes in developing countries;

(c) The Special Rapporteur should explore the possibility of the elaboration of a universal declaration on the effects of illicit dumping of toxic wastes on the enjoyment of human rights;

(d) The Special Raporteur should work closely with the World Health Organization, the International Atomic Energy Agency, the Organization of African Unity, the Secretariat of the Bamako Convention, hospitals and environment agencies in developing countries to gather data on illegal waste dumping, an action which is aimed at embarrassing the "dumpers" by focusing international attention on their activities;

(e) All States should be encouraged to adopt and vigorously implement existing conventions relating to the dumping of toxic and dangerous products and waste and to cooperate in the prevention of illicit dumping, as stated in the Vienna Declaration and Programme of Action;

(f) All States should become parties to the Basel Convention;

(g) There should be adequate funding for existing international monitoring mechanisms to function effectively; and

(h) A focal unit in the Centre for Human Rights to follow up the findings of the Special Rapporteur should be established.

Nigeria finally reiterated its support for the Special Rapporteur in discharging her mandate.

30. Philippines. The Philippine Government, recognizing the issue of the illegal movement and dumping of toxic and dangerous products and wastes in

developing countries, passed a law in 1990 known as the Republic Act 6969 (Toxic Substances and Hazardous and Nuclear Wastes Control Act) which regulates the import, processing, distribution, use and disposal of toxic substances through a notification process for new chemicals and the issuance of Chemical Control Orders for chemicals that pose unreasonable risks to human health and the environment. The import of hazardous wastes for disposal is also prohibited in the Philippines, as is the import of recyclable materials containing hazardous substances unless complying with the requirements set out by the Department of Environment and Natural Resources which works closely with other relevant government agencies such as the Bureau of Customs. No occurrences of illegal movement and dumping of toxic and dangerous products and wastes in the Philippines were reported by the Government.

31. Slovakia. In its reply, the Government of Slovakia expressed concern for the consequences of the illegal treatment of dangerous wastes and recalled some of the measures it has adopted to protect the environment as well as the safety and health of citizens, among them: the Act on Waste No. 238/1991 which prohibits the import of toxic waste with the purpose of its elimination and conditions the import of waste for recycling on the consent of the State administration organ; the Act on the State Administration No. 494/191 with regard to waste which controls waste disposal and includes a classification of waste; the Directive on Record-keeping of Waste No. 605/1992; the Directive on Treatment of Wastes No. 606/1992; the resolution "Strategy, Principles and Priorities of the State Environmental Policy"; and the Waste Disposal Programme which determines objectives and measures for the disposal of both waste and dangerous waste. Furthermore, Slovakia is a State party to the Basel Convention and is in charge of a subregional training centre for the implementation of the Basel Convention for Central and Eastern Europe.

32. United Kingdom of Great Britain and Northern Ireland. In its reply, the United Kingdom Government referred to article 13 of the Basel Convention, which calls for the transmission of data relating to transboundary movements of waste, to inform the Special Rapporteur of the fact that it was in the process of preparing a document which would include any reported cases of illegal traffic in this regard.

III. REVIEW OF INFORMATION PROVIDED BY STATES PARTIES TO THE BASEL CONVENTION

33. According to article 13.3 (f) of the Basel Convention, "The Parties, consistent with national laws and regulations, shall transmit, through the Secretariat, to the Conference of the Parties established under article 15, before the end of each calendar year, a report on the previous calendar year, containing [...] information on accidents occurring during the transboundary movement and disposal of hazardous wastes and other wastes and on the measures undertaken to deal with them".

34. Information received by the ISBC between May 1992 and March 1994 was provided by the following countries: Argentina, Australia, Austria, Bahamas, Bahrein, Brazil, Canada, China, Cyprus, Czech Republic, Estonia, Finland, India, Iran (Islamic Republic of), Hungary, Latvia, Norway, Saudi Arabia, Sri Lanka, Sweden, Uruguay. In 19 cases out of 21, either no accidents were reported or no information was available. The only two ascertained cases concerned Cyprus and the Islamic Republic of Iran. As for the former, "In Cyprus there was one incident as a consequence of hazardous wastes movement

and their disposal. This incident occurred in 1987, when about a hundred old transformers were imported for breaking up and disposal. These transformers contained PCBs in the form of Askarel [...]. Once the event came to the notice of the Government, an investigating Governmental Committee was established to tackle the problem. The solution adopted was for the contaminated soil material and the contained PCBs to be disposed of in a secure landfill, in properly designed chemical cells". As for Iran, "some accidents in the marine environment" were reported, the last of which - the Captain Sakharof accident - occurred in the Persian Gulf region.

35. More replies were received by the ISBC between July 1994 and July 1995 from the following countries: Argentina, Bahrein, Bangladesh, Brazil, Canada, Chile, China, Cyprus, Czech Republic, Ecuador, Finland, Greece, Hungary, Iran (Islamic Republic of), Malaysia, Mexico, Monaco, Netherlands, Norway, Peru, Republic of Korea, Saudi Arabia, Senegal, Slovakia, Spain, Sri Lanka, Sweden, Trinidad and Tobago, Uruguay. In 27 out of 29 cases, either no incidents were reported or no data were available. The only two cases reported to the ISBC concerned Argentina and Mexico. As for the former, "The illegal disposal of hazardous wastes (cyanide) and acids in the sewers caused several accidental deaths [...]". As for Mexico, accidental spills or gas leakages were reported, none of them causing violations of human rights.

36. Even though article 13.3 (f) of the Basel Convention calls for the transmission of information on accidents occurring during the transboundary movement and disposal of hazardous wastes on behalf of the Parties, reporting of incidents seems to be sporadic, vague in their descriptions and lacking details. From the information received, furthermore, it is extremely difficult to appraise the impact of the incidents both on the environment and on human rights.

IV. REVIEW OF INFORMATION SUBMITTED TO THE SPECIAL RAPPORTEUR

37. Information received by the Special Rapporteur from different sources is summarized below. Replies received from the Governments concerned will be reflected in an addendum to the present report. In most of the cases brought to the Special Rapporteur's attention, alleged violations concern the right to life and health as well as the right to information. Some cases regarding alleged violations of other human rights have also been reported, such as the right to safe and healthy working conditions, the right to form and join trade unions, the right to strike and the right to bargain collectively. Furthermore, some cases involve issues related to racism and discrimination. Certain marginalized groups, women and children were particularly affected.

38. Argentina. In 1993, seven people died as a consequence of toxic gas leaking from the drains in the proximity of a concealed deposit of toxic wastes. A first analysis of the sewage water revealed traces of cyanhidric acid which was either thrown directly into the drains or combined with other substances thus creating the lethal mixture. Reportedly, those responsible for the damages caused have not been identified so far.

39. Australia/Philippines and China. In 1994, Philippine customs officials impounded two 12-metre-long containers of computer waste from Australia. When this type of waste arrives in China, workers strip the cables for copper wire

and the remaining material is either burned or stockpiled. These practices can be dangerous and it is uncertain whether workers are informed about the risks involved.

40. Australia/Indonesia. In 1992, Australia allegedly exported more than 11,000 tonnes of battery scrap to Indonesia where IMLI - the largest battery waste importing plant in Indonesia - burnt it. Apparently, when the plant began operations in the late 1980s, villagers believed it was a wood processing plant. Instead, IMLI burns 60,000 tonnes of lead acid batteries each year, threatening the surrounding environment and the health of the nearby community whose lead levels are between two and three times greater than the acceptable occupational health standards. Apparently, IMLI also dumps its waste slag outside its factory gates. Villagers collect it and smelt it in woks over open fires in their backyards, trying to sell the extracted lead content of the slag. Reportedly, people throughout Java are practising this method of recycling wastes.

41. Australia, Japan, New Zealand, the United Kingdom and the United States/the Philippines. Reportedly, in the first six months of 1993, waste traders from Australia, Japan, New Zealand, the United Kingdom and the United States shipped over 16,000 tonnes of battery scrap to the Philippines, violating a national law (Republic Act No. 6969) banning such toxic waste imports. Australia seems to be one of the top exporters of used lead acid batteries to the Philippines. The vast majority of the waste went to a lead smelter near Manila, Lead Smelter Inc. now Philippines Recyclers Inc. (PRI), a local subsidiary of the United States firm Ramcar Batteries Inc. which, despite emission control devices, is polluting the nearby river and surrounding fields. Battery wastes also find their way to small battery recyclers, like the now defunct Parker Batteries (Manila) or C.C. Unson. Reportedly, workers in these plants usually show high levels of lead in their blood, complain about health problems and seem to be subjected to lead exposure. Some cases were reported of people hospitalized because of lead exposure who had to pay for their own medical expenses. Residents of Patubig in Marilao, Bulacan, allegedly had to move because of the fumes released from the PRI plant. Residents and workers around Inmarflex, a secondary lead smelter in Manila, suffer from severe breathing problems; some of them cough up blood. Workers at Parker Batteries used to work in unventilated rooms wearing no protective clothes and exhibit signs of lead contamination with teeth blackened by years of inhaling lead.

42. Australia/Papua New Guinea. In 1963, Australia granted a mining exploration licence to CRA Exploration (later Copper Pty. Ltd.; after mining started in 1972, the company was registered in the Territory of Papua and New Guinea and renamed Bougainville Copper Ltd. BCL.) to prospect for copper at Panguna in Bougainville. Although some measures were adopted to grant compensation and prevent environmental damage, the situation deteriorated. Landowners started forming associations in defence of their rights; in 1987, a new Paguna Landowners Association emerged, later formalized as the Bougainville Revolutionary Army (BRA), and acts of sabotage, which eventually (1990) led to the closing down of the mine, started. The Police Riot Squad, as well as the Papua New Guinea Defence Force (PNGDF), both sent to deal with the situation, reportedly resorted to brutal and illegal ways to contain the strife. Analogous acts of violence were carried on by BRA units. In 1990, a naval blockade in respect of all goods and services except essential medical supplies was imposed by the Government of Papua New Guinea

around Bougainville. The proclamation of a unilateral declaration of independence and the creation of the Bougainville Interim Government followed; the situation has not yet returned to normal and, even though the naval blockade has been lifted, the population in some areas continues to be deprived of basic requirements and many allegations of serious violations of human rights continue to be reported.

43. Brazil. Reportedly, in 1987, some workers at Tonolli and FAE S.A., two of Brazil's largest lead battery waste importers, quit/were fired from their jobs after their health had failed. Four years later, the lead recycling companies were held responsible for lead poisoning. Emissions of lead and cadmium released by Tonolli may be causing highly elevated levels of lead in the blood of children living nearby. In 1988, FAE was fined for violations of occupational health standards, environmental regulations and problems with the smelter itself. An analogous case is that of Microlite, the largest of the battery smelters in Brazil and part of Saturnia Batteries Enterprise.

44. Canada/the Philippines and Papua New Guinea. In 1996, a mine waste spill created a major environmental disaster in the Philippine province of Marinduque, affecting the Boac River and 700 families. Marcopper Mining Corporation, one of Asia's biggest mining firms which is 40 per cent owned by Canada's Placer Dome Inc., promised to compensate for damages caused and immediately rehabilitate the Boac River. It seems that the mine spill has impacted at least 24 villages and some 4,000 people. Several people have been hospitalized. It seems that more than 10,000 people will be affected if the mine waste kills off marine and land animals on which residents rely for food. The Department of the Environmental and Natural Resources and the affected communities have filed civil and criminal charges against Marcopper for the damage caused. Reportedly, the Porgera gold-mine located in Papua New Guinea's western highlands and operated by Placer Nuigini, a local subsidiary of Placer Dome Inc., dumps 40,000 tonnes of tailings per day into the Strickland-Maiapam River and has no tailings retention facilities. Apparently, the mine dumps rock waste as well as heavy metal sulphides and hydroxides, including ferro-cyanide complexes and Jarrosite, into these rivers at levels up to 3,000 times the normal legal limits. Reportedly, local people, concerned about these levels of contamination, asked the Government to improve pollution monitoring and regulation below the mine. Apparently, the Government replied by extending the exemption the joint venture enjoys in dumping tails.

45. Colombia. Reportedly, in a small area in the south of Santander, people and waters are poisoned with glysofato and other radioactive chemicals. Livestock and crops die. People slowly become incoherent with intense pain, accompanied by auditory, olfactory, oral and vaginal haemorrhaging. Some also suffer from dizziness, vomiting, fainting, partial paralysis, headaches and facial disfigurements. Over 400 individuals are presently bedridden. People living in nearby towns who drink from the same two rivers (River Fonse and River Uripas) are also at risk. Also, people are starving due to the impossibility of growing food as the land has been destroyed by chemicals.

46. France/Brazil. In 1993, the immediate closure of the French transnational corporation Rhône Poulenc's plant in Cubatao was ordered by a judge in order to protect plant workers from further exposure to chemicals. Reportedly, huge quantities of hexachlorobenzene- and pentachlorophenol-contaminated soil were identified at the Rhône Poulenc

facility that apparently had concealed the illegal deposits, which were 7,000 to 15,000 times higher than legal contamination levels. In 1992, one of the plant workers died; results from the worker's autopsy revealed HCH in his lungs.

47. France and the United States/Myanmar. In Myanmar, Total - together with Unocal, a Los Angeles-based oil and gas multinational, and Texaco - seem to collaborate with the Government of Myanmar in an offshore natural gas project; reportedly, Texaco's pipeline will run parallel to a pipeline in the process of being built by Unocal and Total. It seems that in order to construct a pipeline through the rain forest, the army has declared "free-fire zones" in which soldiers are authorized to shoot civilians, including members of the Karen tribe, an indigenous ethnic minority group living near the Thai border whose homeland is the pipeline area. Furthermore, it is reported that indigenous peoples are forced to work on clearing forest areas to prepare them for oil and gas exploration and transportation. All of the victims are thought to be Karen; reportedly, some of them have been evicted from the location of the planned pipeline to areas where means to earn a living are scarce.

48. Germany/Albania. Reportedly, in 1993, 239 tons of hazardous pesticides from Germany, stored in leaking drums, were found at the northern Albanian border, endangering Lake Shkoder and the water supply of large parts of the southern Balkans. The German Government was requested to take it back. Reportedly, in 1994, 450 tonnes of expired pesticides - originally sent to Albania as "humanitarian aid" - returned to Germany after more than three years in Albania, where the badly packaged and leaking containers had posed a threat to the land, water and people in Bajza and Miloti provinces. Some of the waste has since been burnt in German incinerators, and the rest consigned to a waste storage facility.

49. Germany/Egypt. Reportedly, in 1992, Egyptian authorities refused to permit the unloading of a cargo of 950 tonnes of plastic wastes originating in Germany which was to be delivered to Egyptian cement kilns as fuel for their ovens. The waste was combinated with 1.7 per cent lead, other heavy metals and polycyclic aromatic hydrocarbons. If burnt in cement kilns, the toxic fumes would have endangered the health of the local population.

50. Germany/India. Reportedly, the German company Wilhelm Grillo is one of the main exporters to Bharat Zinc Ltd., which has been accused of spreading toxic pollution and thus threatening the health of workers and residents near its Mandideep plant, 23 km outside of Bhopal. Allegedly, Bharat Zinc imports thousands of tons of metal waste from which it reclaims zinc; the rest of the hazardous waste, however, seems to be emitted through the factory smokestack or simply dumped behind the factory. Apparently, the workers in the factory are neither informed of the dangers nor provided with protective clothing.

51. India. Some of the world's most toxic pesticides are reported to be amongst the most widely used insecticides in India, of which 55 per cent are applied to cotton. As a result, babies from the cotton-growing region of Mukteshwar are consuming 24 times the level of DDT designated safe by WHO. Also, all 130 samples of mother's milk taken from the Punjab were contaminated with residues of DDT and HCH; the same for infant formula. The health impacts of pesticide use in India also include accidental and occupational poisonings and deaths.

52. Japan/Malaysia. In 1992, a Japanese joint venture - Asian Rare Earth (ARE) - had to close for environmental reasons and for posing health threats to villagers in Bukit Merah, Malaysia. Eight people, two of whom have since died, filed suit against ARE in 1985 and asked for compensation for the pain and suffering ARE caused the village. The plaintiffs charged that radon gas had escaped from the ARE facility and made many people sick. Increased incidence of leukaemia, infant mortality, congenital defects and increased levels of lead in children's blood were all acknowledged by the judge. In 1992, ARE gained permission to resume operation. Due to widespread public protest, Mitsubishi (which owns 35 per cent of ARE) chose not to resume operation at ARE until a final decision is handed down by the Supreme Court. It is unclear when the decision will be made.

53. Lebanon. In September 1996, the Special Rapporteur received a complaint from a victim who reported that the dumping of toxic wastes in Lebanon resulted in the hospitalization of a man whose family was charged US$ 30,000 for medical treatment.

54. The Netherlands and the United States/India. Reportedly, the Netherlands is one of the main exporters to Bharat Zinc Ltd., accused of spreading toxic pollution and threatening the health of workers and residents near its Mandideep plant (see para. 51 for details).

55. The Netherlands and the United States/Nigeria. The Shell transnational corporation projects (Royal Dutch Shell and Shell Oil USA) seem to pose a threat to the Ogoni people, a community in southern Nigeria: in order to allow non-indigenous residents - employees of Shell - to carry out business ventures without being molested, the 1,050-km^2 region, with a population of 500,000 Ogoni, has been occupied by the police since May 1994. Human rights violations have been reported, in addition to sporadic and discretionary enforcement of environmental regulations: reportedly, unlined toxic waste pits allow pollution to seep into drinking water supplies, thus threatening the right to health of surrounding communities, and calls for compensation from the oil companies are often met with claims of sabotage or payment of compensation to the Government of which the local villagers see little.

56. Saudi Arabia/the Philippines. Reportedly, in the last three years Saudi Arabia has emerged as one of the major exporters of scrap batteries to the Philippines. Figures from 1994 to April 1996 indicate exports totalling 9,440 tons.

57. Singapore. Reportedly, in the last three years Singapore has emerged as one of the major exporters of drained or undrained scrap batteries to the Philippines. Figures from 1994 to April 1996 indicate exports totalling 9,280 tons.

58. Thailand. In 1991, a massive explosion and fire occurred at the Klong Tooey port in Bangkok, in an area where imported and abandoned hazardous chemicals and wastes had been stored for years. After the fire, Thai government authorities allegedly relocated the toxic residues to a dumpsite in a military area in Kanchanaburi. The toxic waste is buried approximately 4 m underground and the entire 3,800-m^2 area is covered with cement. Residents of Kanchanaburi, who live near the dumpsite, report skin rashes after bathing with well water and have traced the source to leaking toxic chemicals from

the dumpsite. Reportedly, the waste leaks. After local residents tried to pressure the Government to take action, authorities announced that the site would be upgraded.

59. Turkey. Three power plants - Yatagan, Yenikoy and Gokova, located in Mugla region and operated by the Ministry of Energy and TEAS (Turkish Electricity Authority) - seem to be responsible for polluting the whole region, including the Marmaris Peninsula, the Datca Peninsula, Gocek Bay, "Special Protected Area" Koycegiz, Ortaca and Dalaman, with toxic emissions and acid rain. Reportedly, the area between Yatagan and Yenikoy, which was covered with pine forests and fruit trees before 1982, is now a Mond process open-air coal-mine extending hundreds of thousands of hectares, full of piles of radioactive waste ashes which are contaminating the underground water and soil. Yearly, 700 tons of uranium are discharged in the open piles of ashes. Cases of cancer, asthma/bronchitis, goitre and heart disease as well as miscarriages, loss of hair, and eye, skin and mental diseases among the inhabitants of the area seem to be increasing and apparently, accounts are not kept of medical investigations. Reportedly, in 1993 lawsuits were brought before the Regional (Aydin) Administrative Court in order to stop the environmentally hazardous activities of the three power plants. The Aydin Administrative Court decided to stop them but the Turkish Council of Ministers decided to allow the plants to continue to operate despite the decision of the court.

60. The United Kingdom. ReChem's toxic waste incinerator in Pontypool, south Wales, has been for 20 years the destination of thousands of tonnes of highly toxic wastes, especially polychlorinated biphenyls (PCBs), from all over the world. The plant is close to residential areas; local people complain about dark smoke and noxious smells from the plant whose toxic emissions hang in the stagnant air. Scientific investigations have reported raised levels of PCBs and dioxins around the plant. Reportedly, the Government has refused calls for a public inquiry into the plant and ReChem has stifled public debate.

61. The United Kingdom/Colombia. British Petroleum (BP) seems to be held responsible for collaborating with Colombian soldiers involved in serious violations of human rights: BP allegedly passed on information about local people protesting oil activities to the Colombian military who then arrested or kidnapped them on grounds of being subversives. Reportedly, in the summer of 1996, BP signed an agreement with Colombia's Ministry of Defence to create a batallion of 150 officers and 500 soldiers to monitor construction of a 550-mile-long pipeline; it seems that all oil companies operating in Colombia have to pay a "war tax" to help fund the war against those who want to nationalize Colombia's oil industry. The company is also held responsible for environmental damage ranging from devastating a protected forest, to polluting a river, to damaging bridges and roads that local people use to transport their products to market. Yet, in November 1996 BP decided to urge the Colombian Government to investigate allegations concerning its employees who are supposedly collaborating with the army and its paramilitary allies.

62. United Kingdom/Malaysia. The United Kingdom-based transnational corporation Imperial Chemical Industries (ICI) manufactures and sells paraquat under the trade name Gramoxone and has a formulation plant in Malaysia which witnessed an enormous growth in rubber and oil plantations, which are heavily dependent on herbicides. Paraquat accounts for almost 80 per cent of all

herbicide sales. About 130,000 women, especially young women between the ages of 16 and 25, work as pesticide sprayers on plantations. Reportedly, they work under harsh conditions and many of them never see a doctor, or if they do, their symptoms are often misdiagnosed as flu, heat rash or gastroenteritis whereas acute poisoning among female plantation workers in Malaysia seems to be quite common.

63. United Kingdom/Indonesia. In the first five months of 1993, the United Kingdom allegedly shipped over 700 tonnes - compared with 200 tonnes shipped in 1992 - of lead acid batteries to Indonesia, where IMLI - the largest battery waste importing plant in Indonesia - burns 60,000 tonnes of lead acid batteries each year, threatening the surrounding environment and the health of the nearby community.

64. United Kingdom/South Africa. The British transnational corporation Thor Chemicals announced that it would phase out all mercury-related operations at its Durban plant by the end of 1996, after three Thor executives were charged with culpable homicide and 42 contraventions of safety laws following the death of a worker from suspected mercury poisoning. Apparently, another worker is in a deep coma, one is unable to walk or talk, and a fourth is in hospital. Public pressure pushed the Government to ban the import of toxic wastes, a ban that apparently did not include materials imported for recycling, which is what Thor Chemicals claimed to do. Reportedly, inside Thor's factory today are more workers who have been poisoned by mercury, having been consistently exposed to dangerous levels of mercury, sometimes 20 times higher than the internationally accepted safe limit. Thor employs 60-100 black labourers, most of whom handle a variety of high risk exposure operations without apparently even knowing of the dangers involved. Former Thor workers still suffer from mercury poisoning. Reportedly, workers employed by Thor on a part-time basis as casual labourers were dismissed after they began to suffer symptoms of mercury poisoning. The factory also seems to be the number one suspect in the mercury pollution of the surrounding area.

65. United States. A prevalence of environmental inequities based on socio-economic and racial factors has been reported: of the two factors, race appears to have both an independent and a more important relationship with the distribution of commercial hazardous waste facilities than income. In fact, race is the single best predictor of where commercial hazardous waste facilities will be located, even when other socio-economic characteristics of communities, such as average household income and average value of homes, are taken into account.

66. Nuclear contaminants seem to represent a serious problem throughout many indigenous communities in North America and the Pacific, storage and dumping of nuclear waste being just one method of contamination. Reportedly, in 1995 the Mescalero Apache people voted to refuse the "privatized" nuclear waste of Northern States Power but in a second vote the project passed. The scheduled opening date is 2002. Opponents are trying to stop it. Yet, the major problems of pollution imported onto Indian lands appear to be associated with the toxic dumping of PCBs throughout the western hemisphere as well as pollution as a result of mineral and natural resource exploitation.

67. Reportedly, many maquilas (garment assembly plants) along the Texas-Mexico border, which are often portrayed as clean, light industry, use toxic materials. It seems that undisciplined and illegal disposal of wastes

is not infrequent. These plants allegedly are not even required to provide information to workers or community residents about emissions or chemicals used or stored and numerous incidents have been reported: they include a case of children being intoxicated at a dump in Ciudad Juarez by sniffing green rocks covered with a solvent containing toluene, and a maquiladora that closed and left in an abandoned building a dozen 55-gallon drums of hazardous material. The present state of affairs seems to have improved slightly in comparison to the situation in the last decade.

68. Reportedly, WMX Technologies - Chemical Waste Management's parent company - is considering taking advantage of the North American Free Trade Association (NAFTA) by exporting hazardous waste from the United States to Mexico for disposal there; the company is accused of dumping on communities of colour in the United States, on Indian lands, as well as in developing countries.

69. Reportedly, the United States-based Uniroyal Corp. will continue selling a hazardous pesticide - Propargite - to farmers overseas even though the product has been withdrawn from domestic markets for health and safety reasons. Apparently, the company's decision to withdraw its product from foreign markets will depend on the environmental laws and policies of the importing countries.

70. Reportedly, the use of hundreds of tons of depleted uranium (DU) bullets in the Persian Gulf during Operation Desert Storm (1991) coupled with unexplained illnesses experienced by veterans who had been exposed to numerous potentially toxic substances have focused public attention on a possible link between these illnesses and the health hazards associated with DU munitions. The military use of DU poses threats to both humans and the environment; also, the expense of DU clean-up seems to be immense. Yet, DU munitions are sold in the world arms market and the United States has apparently led in their development, use and commercialization. Approximately 50,000 veterans in the United States and 4,000 in allied countries who served in Operation Desert Storm subsequently suffered from a variety of ailments, usually referred to as the Gulf War Syndrome or Desert Storm Illness.

71. The United States/Argentina. Apparently, the so-called "waste paper" bales exported for recycling from the United States and some European countries to Argentina are basically toxic waste which poses health and safety risks for the workers who have to handle the bales, both through skin contact and through inhalation. Also, there is a more general contamination problem since contact with the material could give rise to a whole range of serious infections. Furthermore, the wastes are not desinfected before being put into pulpers or while inside the pulpers, which causes a further contamination problem since the recycled paper is subsequently used in, among other things, toilet rolls and paper serviettes, and even in food wrappings.

72. The United States/Ecuador and Peru. The oil industry is seen as the biggest destroyer of Ecuador's 13 million hectares of rainforest inhabited by eight groups of indigenous people (Texaco had 330 wells in Ecuador. It has left the country, but PetroEcuador has taken its place). It seems that 1 million hectares of the country's forest have been destroyed and 90 per cent of this destruction is due to the operations of Texaco/PetroEcuador. Inevitably, these operations have affected the health of the people living there. Some 30,000 Ecuadorian victims of Texaco's abuses have banded together

and sued the company in its home State of New York, asking it to stop dumping waste and to invest in new technology. In 1994, Texaco reached an agreement with the Government of Ecuador for the company to remedy any damage caused by its oil drilling operations. The plaintiffs' litigation team then filed a complaint on behalf of approximately 25,000 Peruvians living along the Napo River. In 1995, the judge ordered consolidation of the two suits.

73. The United States/Indonesia and Papua New Guinea. In Indonesia, pollution from Texaco's Caltex operations has been held responsible for killing fish in Siak River tributaries, destroying rubber trees near the streams and causing skin diseases among Sungai Limau villagers. Freeport-McMoRan, a New Orleans-based mining company operating on the western half of the island of New Guinea (Irian Jaya), seems to be responsible for dumping 120,000 tonnes of toxic waste per day into local rivers, thus contaminating local fish and vegetation and causing severe health problems for the people that live near the river. Furthermore, the Amungme, a highland people, seem to have been displaced from their land in a series of forced removals begun after 1973; apparently the estimated 5,000 Amungme and Komoro peoples evicted from the area have received no compensation. Since 1994, the killing or disappearance of 22 civilians has been reported and 15 guerrilla acts seem to have taken place in and around the mine. Apparently, Freeport security cooperated with the Indonesian army during some incidents, including an attack in which three people were killed and five disappeared. In 1996 a $6 billion lawsuit was filed in a United States district court in New Orleans which, reportedly, charges the company with responsibility for a range of human rights and environmental abuses which have had a strong impact on the tribal communities whose natural habitats have been affected.

V. CONCLUSIONS AND RECOMMENDATIONS

74. In her first report to the Commission, the Special Rapporteur carefully noted the main trends in the illicit movement and dumping of toxic products and wastes, and clarified their characteristics as well as their disastrous effects on the enjoyment of human rights, particularly the rights to life and health. The Special Rapporteur also reviewed the legal framework of her mandate, the historical background to the problem, the factors contributing to the development of the phenomenon and the special difficulties encountered by the African and other developing countries. Consequently, the present report focuses primarily on the preliminary results of the analysis of the information transmitted to her concerning particular cases affecting individuals, groups or countries.

75. In order to evaluate the data brought to the attention of the Commission in the present report, the conclusions and observations contained in the first report should be borne in mind.

76. The illicit traffic in toxic and dangerous products and wastes can assume various forms, the principal characteristic being the ability of the persons engaged therein to adapt to the changing international situation. For example, from 1986 to 1988, more than 3.6 million tonnes of waste were apparently dispatched from the OECD countries to other countries purely and simply in order to be dumped with a view to their disposal or permanent storage.

77. In recent years, however, there has been a notable increase in the movement of waste from the developed countries to the developing countries in the form of recycling or recovery operations. According to some sources, 95 per cent of the dangerous wastes forming the subject of transboundary movements between OECD and other countries are intended for recovery operations. In addition to the dangerous recycling operations, such as the installation of incineration and lead recycling plants or the export of highly pollutant industries and technologies, numerous transboundary movements of dangerous wastes for recycling purposes are apparently of a fictitious nature.

78. In the face of international pressure, the waste traffickers resort to fraudulent manoeuvres and even bribery. Enterprises use buffer companies and dangerous wastes are exported, in violation of the legislation of the exporting and importing countries, in the form of material intended for recycling or products forming part of development projects. Humanitarian assistance has also apparently been used as a cover in at least one evident case of attempted export of dangerous products from a wealthy to a poor country.

79. In this regard, at their third meeting in 1995, the States parties to the Basel Convention took a wise decision to amend the Convention in such a way as to prohibit the export of hazardous wastes, even for recycling purposes, from OECD member countries to non-member countries. The ban on recycling is due to enter into force at the end of 1997.

80. The States parties to the Basel Convention unanimously recognized that there was a high risk that transboundary movements of hazardous wastes, especially to developing countries, might not constitute an environmentally sound management of those wastes. In that regard, the amendment that was adopted by consensus should make it possible to rectify some shortcomings and ambiguities through which, in the past, exports of wastes deemed harmful by developing countries, some of which had refrained from acceding to the Convention, were considered as legal. Since that time, there has been a revival of interest in the Convention. By 11 December 1996, 106 States, of which 17 were in the African region, 30 in Asia and the Pacific and 22 in Latin America and the Caribbean, had become parties to the Convention (as compared with 73 in 1994, of which only 9 were African countries).

81. The ban on the export of hazardous products, including those intended for recycling, which has now been imposed by the Basel Convention would remain a dead letter if it were not accompanied by practical measures for the detection of illicit practices. This can be achieved only by strengthening the capacities of the developing countries.

82. Various factors of a legal, economic, social and political nature are contributing to the illicit traffic, transfer and dumping of toxic and dangerous wastes and products in African and other developing countries (see the preliminary report of the Special Rapporteur, E/CN.4/1996/17, paras. 103-115, 149 and 150).

83. In this regard, the promulgation of strict legislation to control transboundary movements of dangerous wastes should be continued and, in particular, encouraged in the developing countries in order to reduce the discrepancies between the national legal norms applied in the developed and the developing countries. International cooperation remains crucial.

84. The developing countries should be provided with legal aid and assistance for the purpose of training their magistrates and agents concerned with a view to the formulation of national legislation that would make it possible to effectively combat the illicit traffic and strengthen national capacities to detect, prevent and punish fraudulent practices.

85. States should develop their penal legislation in this field and introduce administrative, civil and penal sanctions in order to prosecute and punish this illicit traffic. Regional initiatives, such as that of the Council of Europe which is formulating a convention for the protection of the environment through criminal law, should be encouraged. States should develop legislative provisions concerning the civil and criminal liability of individuals and bodies corporate.

86. In the case of transboundary movements of toxic wastes which have proved harmful to residents of a State other than the exporting country, the victims should have access to the administrative and judicial procedures of the exporting country. Non-resident victims should be able to avail themselves of the same means of redress and should enjoy the same treatment as residents. This is all the more necessary since the movement of toxic wastes often assumes a transnational character. Failing such redress, the entities involved in illicit transboundary traffic would be able to contravene the regulations of their country of origin with impunity and benefit from local deregulation.

87. National and international regulations would be ineffective in the absence of efficient control and implementation mechanisms.

88. For its part, the Basel Convention made provision for monitoring mechanisms, including a system for the transmission of information by States parties in accordance with article 13. This arrangement, which is largely voluntary, is only partly enforced. The States parties seem hesitant to report incidents and to notify the Secretariat of the Convention of illicit movements of toxic wastes. A working group is studying the questions relating to the establishment of a mechanism to monitor the application of the Convention and compliance therewith. It is to give an account of its conclusions to the fourth session of the Conference of States Parties. Hopefully, the Convention's monitoring system will be strengthened following that examination.

89. The role of non-governmental organizations and associations, local communities and associations, trade unions, workers and victims should be overt and should be consolidated. Freedom of expression, freedom of association and access to effective means of redress could contribute, in conjunction with the efforts made by governmental authorities, to effectively combating transboundary movements of toxic and dangerous wastes and products which are detrimental to the environment, to development and to the lives and health of the persons who are victims thereof. However, the communications addressed to the Special Rapporteur show that, far from being deemed complementary, that role is, if not thwarted, at least underestimated.

90. Nevertheless, the communications dealt with in this report remain preliminary and the Special Rapporteur cannot draw conclusions therefrom before the governmental replies and comments have been analysed. The Special Rapporteur would appreciate any cooperation received in this regard.

91. As requested in the Commission's resolutions concerning her mandate, and through the communications that she has received, the Special Rapporteur has endeavoured primarily to identify the country of origin of illicit movements and/or the countries to which the corporations involved belong and, at the same time, to list the countries of destination of the toxic wastes and dangerous products. In cases in which the country of origin has not been identified, only the country of destination or export is mentioned. Wherever possible, the number and type of the victims, as well as the violations of human rights to which they were apparently subjected, have also been indicated. In some cases, the information submitted to the Special Rapporteur did not permit such identification.

92. Finally, in most of the communications dealt with, it was possible to determine the name and, as appropriate, the country of origin of the transnational corporation involved. However, objective reasons relating to shortage of time and staff made it impossible, at this stage, to produce a list of the countries and transnational corporations engaged in the illicit dumping of toxic and harmful products and wastes in the developing countries, particularly as the communications that were examined seemed to refer to only a very small proportion of the transboundary flow of toxic wastes and dangerous products. In view of the workload and the research that such a task involves, the Special Rapporteur wishes to point out that such a list could not be produced unless she were provided with adequate human resources.

93. The Special Rapporteur also wishes to re-emphasize the importance of in situ visits for the discharge of her mandate. Consequently, she hopes that, as in the case of the Commission's other thematic rapporteurs, the financial resources appropriated to that end will be released in order to enable her to fulfil her mandate.

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QUESTION OF THE REALIZATION IN ALL COUNTRIES OF ECONOMIC, SOCIAL AND CULTURAL RIGHTS CONTAINED IN THE UNIVERSAL DECLARATION OF HUMAN RIGHTS AND IN THE INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS, AND STUDY OF SPECIAL PROBLEMS WHICH THE DEVELOPING COUNTRIES FACE IN THEIR EFFORTS TO ACHIEVE THESE HUMAN RIGHTS

Report of the open-ended working group on structural adjustment programmes and economic, social and cultural rights on its first session

(Geneva, 3-7 March 1997)

Chairperson-Rapporteur: Ms. Lilia Bautista (Philippines)

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Introduction

1. At its fifty-second session, the Commission on Human Rights, in its decision 1996/103, decided to establish an open-ended working group of the Commission to meet for a period of one week prior to its fifty-third session to elaborate, on the basis of the preliminary set of basic policy guidelines on structural adjustment programmes and economic, social and cultural rights contained in document E/CN.4/Sub.2/1995/10 and in close cooperation with the Committee on Economic, Social and Cultural Rights, policy guidelines on the subject-matter.

2. In order to perform the tasks entrusted to it, the working group took as a basis a report prepared by the Secretary-General containing a preliminary set of basic policy guidelines on structural adjustment programmes and economic, social and cultural rights (E/CN.4/Sub.2/1995/10) as well as a document containing comments on the preliminary set of basic policy guidelines transmitted by Governments, specialized agencies and non-governmental organizations (E/CN.4/1997/WG.17/2).

3. The present report describes the proceedings of the open-ended working group. The principles, policy guidelines for action at the national level and policy guidelines for action at the international level, that were either discussed by the working group or not discussed due to the lack of time, have been annexed (annex I).

Opening and duration of the session

4. The open-ended working group on structural adjustment programmes and economic, social and cultural rights was held at the Palais des Nations, Geneva, from 3 to 7 March 1997. The session was opened by a representative of the High Commissioner for Human Rights. The working group held six plenary meetings and two informal meetings.

Composition of the working group and attendance

5. The open-ended working group consisted of the following representatives of States members of the Commission on Human Rights: Algeria, Brazil, Chile, China, Colombia, Cuba, Egypt, El Salvador, Ethiopia, Germany, India, Japan, Malaysia, Mexico, Nepal, Netherlands, Nicaragua, Philippines.

Observers

6. The following observers from other States Members of the United Nations attended the session: Costa Rica, Holy See, Nigeria, Peru, Poland, Portugal, Spain, Thailand, Tunisia.

7. The following specialized agencies were represented at the session: International Labour Organization, International Monetary Fund, World Bank.

8. Representatives of the following non-governmental organizations attended the session: International Movement ATD Fourth World, World Federation of Democratic Youth, American Association of Jurists, International Service for

Human Rights, Women's International League for Peace and Freedom, War Resisters' International, World Christian Life Community, Education International, Organization of African Trade Union Unity.

Election of officers

9. At its first meeting, the working group elected Ms. Lilia Bautista (Philippines) as Chairperson-Rapporteur.

Adoption of the agenda

10. At its first meeting, the working group adopted the following agenda:

1. Election of officers.

2. Adoption of the agenda.

3. Implementation of Commission on Human Rights decision 1996/103, entitled "Effects of structural adjustment policies on the full enjoyment of human rights".

Documentation

11. A list of the documents that were before the working group is contained in annex II.

Organization and method of work

12. In order to facilitate the work of the working group, the Chairperson suggested and the working group agreed, that a working paper on principles should be prepared by delegations from the Latin American region, a working paper on policy guidelines for action at the national level should be prepared by delegations from the Asian region, and a working paper on policy guidelines for action at the international level should be prepared by delegations from the African region. Other delegations were not in a position to assist in this preparatory work.

I. GENERAL DISCUSSION

13. While some delegations noted that there was a need to update the report of the Secretary-General containing a preliminary set of basic policy guidelines on structural adjustment programmes and economic, social and cultural rights (E/CN.4/Sub.2/1995/10), a number of other delegations considered that it was a valuable and useful document.

14. In the view of one delegation document E/CN.4/Sub.2/1995/10 was not an adequate basis for working on the subject of the effects of the structural adjustment programmes on the full enjoyment of human rights. Many articles of the document were outdated and based on an ideological approach, whereas any approach to the subject should be impartial and objective. In addition, it exceeded the mandate of a human rights working group by recommending detailed social, political and economic programmes at the national and international levels, and guidelines for international cooperation, some of which were not

directly linked to the impact of structural adjustment programmes. The representative of that delegation suggested that the mandate should be extended to all human rights. However, other delegations considered that to do so would exceed the mandate the Commission on Human Rights had given to the working group and was beyond its scope.

15. At its third meeting, on 5 March 1997, the representative of IMF made a presentation on IMF/World Bank supported structural adjustment programmes which he said were aimed at promoting high-quality growth which would lead to the enhancement of living standards and the quality of life for all around the globe. He outlined the key ingredients of adjustment and reform that provide the recipe for such growth: sound macroeconomic policies, i.e., a firm anti-inflationary monetary policy, a sustainable fiscal strategy and a realistic exchange rate; appropriate structural policies that provided a market-friendly environment for growth, together with a development strategy focused on growth and suited to the country's resources and needs; a liberal trade and exchange regime that fostered international trade and investment; sound and active social policies, including well-targeted social safety nets that alleviated poverty and protected the most vulnerable from any short-term adverse impact of adjustment and reform, as well as policies that promoted greater equality of opportunity; and, good governance which referred to the need for publicly accountable government, participatory government, and legal and regulatory frameworks that were transparent, fair and limited to what was strictly necessary. He underlined, however, that while those ingredients and reform policies were needed for the attainment of high-quality growth, IMF should not and could not be seen as the guardian of each and every one of them. The role of IMF was to foster fiscal consolidation; firm anti-inflationary policies, liberalization of financial sectors and pursuit of a realistic exchange rate; opening up of the economy to international trade, foreign capital and competition; price liberalization; and public enterprise reform.

16. The presentation was followed by questions and comments from participants. Clarification was sought on whether the restructuring of developing country economies was, in fact, intended to extract as much debt repayment as possible so as to avoid the equitable sharing of loan losses between the creditors and borrowers, and to make those economies conform to a single economic model compatible with the long-term interests of a world economy dominated by the rich industrialized countries. Questions also related to the impact of such programmes on commodity prices and on the environment and natural resource base of developing countries resulting from the competitive rush by all adjusting countries to simultaneously expand their exports in shrinking international markets; the failure to take into account specific conditions of countries; problems related to competitive currency devaluation resulting from the requirement to liberalize foreign currency; the reduction in the availability of resources for the realization of economic, social and cultural rights resulting from stringent budgetary policies, the weakening of the role of the State, and liberal trade regimes; the need to develop an indigenous private sector in the context of privatization of public enterprises and social services and the increased role of a non-indigenous private sector less sensitive to both market and social signals; social consequences of reducing public expenditure; the ability of IMF to be the guardian of the international financial system as an overwhelming share of international financial flows were diverted from productive investment to financial speculation; the meaning of "available" or "limited" resources in the

context of huge international financial flows towards speculation; the role of IMF in post-conflict situations and its attitude to peace agreements, particularly in Central America, aimed at promoting development and improving the well-being of the population; the impact on human rights of the emphasis on economic over human values; measures envisaged by IMF, other than social safety nets, to counter the increased social, economic and political marginalization of vulnerable sectors of the population; the use of social indicators; the ability of new IMF/World Bank initiatives to resolve the debt burden of heavily indebted countries; the extent of consultation with ILO in formulating structural adjustment programmes.

17. In his reply, the representative of IMF underlined that economic forums are designed to engage all countries in a multilateral process based on non-discrimination and freedom of transaction. The IMF initiative in favour of heavily indebted poor countries was a recognition of growing debt owed to multilateral institutions. The objective of structural adjustment programmes was to enable developing countries to have more normal commercial relations with other countries, since access to international capital and increased exports were essential for development and growth. While recognizing that the simultaneous export of the same product by all adjusting countries was a problem, he drew attention to a general consensus that a growth strategy based on an open economy was more efficient than that based on a closed economy. He also explained that IMF policy prescriptions were never uniform but took account of the specific situation of each country. With regard to budgetary stringency, he stated that the aim of structural adjustment programmes was displacement, i.e. to ensure a shift from unproductive to productive expenditure. In his view, while it was not possible to tell what the results would have been without structural adjustment programmes, countries that had implemented them more rapidly and in a sustained manner had shown better economic performance than those that had not. With regard to the foreign debt crisis, he underlined that borrowing must be limited to the ability of a country to repay. On the IMF role in post-conflict situations, he stated that while it provided technical assistance and policy advice, the amount it lent depended on the urgency of the situation and on progress made in policy formulation. Recognizing that structural adjustment programmes were having a negative social impact, he considered that solutions must be found through, inter alia, targeted safety nets. He drew attention to the good relations existing between IMF and the Commission on Human Rights and said that cooperation with ILO was developing.

18. At its fifth meeting, on 6 March 1997, the representative of the World Bank made a presentation on structural adjustment programmes which he said were necessary to enhance economic growth and create macroeconomic stability. However, the World Bank had learned from experience that macroeconomic stability alone was insufficient to eradicate poverty. Recognizing the extent of poverty and inequalities in the distribution of income in the world, he underlined the need to modernize economies, ensure economic growth, eradicate poverty through a flexible approach, ensure higher incomes and provide the services needed by the population. He also emphasized the need to focus on both equity and efficiency. Furthermore, popular participation and the role of education were important factors for the

elimination of poverty. Moreover, it was not the intention of the World Bank to focus on cuts in social and health programmes, and the central goal of the World Bank was to eradicate poverty.

19. The presentation was followed by questions and comments from participants. They related to the balance between the right to development and structural adjustment programmes; the impact of conditionalities on national sovereignty and the ability of States to make independent policy decisions; the conflict of interest between government constituencies, composed of electors, and that of the World Bank, composed of shareholders: the impact of debt servicing on the allocation of resources to education and other social services; the impact of social expenditure cuts and labour market flexibility on access to jobs; the balance between economic interest and theory, on the one hand, and social interests and the attainment of social goals and social stability, on the other; excessive interest rates; the growing imbalance between private and public investment; policies envisaged by the World Bank to modify and channel the huge mass of international financial flows from speculation to social development; the conflict between World Bank understanding of "good governance", reflected in its advocacy of judicial reforms aimed at promoting privatization and free markets, and the concerns of human rights bodies aimed at protecting human rights; the World Bank approach to poverty alleviation; the use of social indicators.

20. In his reply, the representative of the World Bank said that the Bank was sensitive to the right to development. He underlined that there was complementarity of action between Governments and the World Bank: while the Bank made proposals it remained the responsibility of States and of society to implement them. He pointed out that the constituency of the World Bank was composed of Governments and that even though the interests of the rich countries were to some extent reflected in its attitudes, Bank staff tended to identify with those experiencing difficulties rather than with its shareholders. Decision-making in today's capital markets lay with money managers and not with the World Bank. He also said that it was not the Bank's policy to cut social expenditures; rather it was allocating resources for social safety nets. He considered that labour market flexibility was in the interest of the poor and that minimum wage legislation lead to reductions in who were employment. He believed that there was a conflict of interest between those employed in the formal market and enjoyed union protection and others who did not. Hence, protection of the former would be at the expense of the latter. With regard to the ability of the Bank to influence international financial flows from speculation to social development, he said that its influence was limited; however, it was helping countries create the necessary conditions to attract foreign investments and improve the enforceability of contracts. With regard to "good governance", he said that because of the Bank's mandate, judicial reform was limited to improving economic performance and ensuring the speedy conclusion of contracts between private investors. The World Bank was also making efforts to formulate social indicators and to improve the quality of jobs, including working conditions. High quality education accompanied by productivity and social programmes was essential to poverty eradication.

21. The working group initially identified the principles that might be the relevant and maybe subject of future discussion, with a view to establishing a

clear linkage between these principles and structural adjustment programmes as they impinged on economic, social and cultural rights. The working group identified certain principles in the report of the Secretary-General which it considered could be looked into for further discussion on their relationship with structural adjustment programmes. The working group noted that, owing to lack of time, it was unable to elaborate other relevant principles, which could be identified at a later stage. The principles identified are contained in annex I, section A.

22. In addition, in the course of its work, the working group elaborated further principles to be considered at its next session. These have also been included in annex I, section A.

23. The working group believed that the report on national policies contained obligations of States under various covenants which may or may not be directly relevant to structural adjustment programmes. The working group, however, agreed that the policies annexed might have more relevance to the subject. (See annex I, sect. B.)

24. With respect to action at the international level, the working group decided to annex a working paper (annex I, sect. C). Owing to the lack of time, this paper was not discussed.

II. RECOMMENDATIONS

25. Taking note of the elements contained in document E/CN.4/Sub.2/1995/10, the Working Group on structural adjustment programmes and economic, social and cultural rights recommends to the Commission on Human Rights that:

1. The open-ended working group on structural adjustment programmes and economic, social and cultural rights meet again for one week, at least four weeks before the fifty-fourth session of the Commission on Human Rights, with a mandate to:

(a) Gather and analyse information on the effects of structural adjustment programmes on the realization of economic, social and cultural rights;

(b) Elaborate basic policy guidelines on structural adjustment programmes and economic, social and cultural rights which could serve as a basis for a continued dialogue between human rights bodies and the international financial institutions.

2. In order to enable the working group to carry out its mandate the Commission:

(a) Appoint an independent expert, preferably an economist with specialization in the area of structural adjustment programmes, to undertake a study on the effects of structural adjustment policies on

economic, social and cultural rights 1/ in cooperation with the Centre for Human Rights. The expert should update previous work done on this subject within the United Nations, as well as outside, and submit a consolidated study, including a draft set of guidelines, to the Commission on Human Rights at its fifty-fourth session. The expert should be appointed by the Chairman of the Commission on Human Rights in consultation with the regional groups;

(b) Request the Secretary-General to circulate the study to Governments, United Nations bodies, in particular the regional commissions, specialized agencies and intergovernmental organizations, as well as non-governmental organizations, particularly development NGOs, and academic institutions and organizations representing disadvantaged and vulnerable groups, to submit their comments thereon to the working group at its next session;

(c) Request the Secretary-General to invite specially and encourage development NGOs working in the field to participate actively in the sessions of the Working Group.

1/ One delegation was of the view that the mandate should be extended to include the full enjoyment of human rights (refer to para. 14 of this report).

Annex I

TEXT OF PRINCIPLES AND POLICY GUIDELINES DISCUSSED BY THE WORKING GROUP OR PROPOSED FOR ITS FUTURE CONSIDERATION

A. Principles based on a working paper prepared by Latin American delegations participating in the working group

1. Principles discussed by the working group

1. By virtue of the principle of equal rights and self-determination of peoples enshrined in the Charter of the United Nations, all peoples have the right freely to determine, without external interference, their political status and to pursue their economic, social and cultural development, and every State has the duty to respect this right in accordance with the provisions of the Charter.

2. Every State has the primary responsibility to promote the economic, social and cultural development of its people, to choose its means and goals of development, fully to mobilize and use its resources, to implement progressive economic and social reforms and to ensure the full participation of its people in the process and benefits of development. All States have the duty, individually and collectively, to cooperate in eliminating obstacles that hinder such mobilization and use.

3. Each Government has the primary role and ultimate responsibility of ensuring the social progress and well-being of its people.

4. All human rights and fundamental freedoms are indivisible and interdependent; equal attention and urgent consideration should be given to the implementation, promotion and protection of civil, political, economic, social and cultural rights.

5. Based on a people's own efforts, the strategy of rapid economic and social progress cannot be deduced from single models or rigid formulas: it must be drawn up in the light of national conditions and characteristics and necessitates a commitment on the part of each State and the cooperation of all States.

6. The human person is the central subject of development and should be the active participant and beneficiary of the right to development. Development policies should aim at the constant improvement of the well-being of the entire population and of all individuals, on the basis of their active, free and meaningful participation in development and in the fair distribution of the benefits resulting therefrom.

7. States have a duty to cooperate with each other in ensuring development and eliminating obstacles to development.

8. States should realize their rights and duties in such a manner as to promote a new international economic order based on sovereign equality, interdependence, mutual interest and cooperation among all States, as well as to encourage the observance and realization of human rights.

9. States should cooperate in facilitating more rational and equitable international economic relations and in encouraging structural changes in the context of a balanced economy in harmony with the needs and interests of all countries, especially developing countries, and should take appropriate measures to this end.

10. Structural adjustment programmes, in the context of the attainment of macroeconomic balance, should contribute to modernization, diversification and growth of the economies of the developing countries and, at the same time, to the fulfilment of the aim of improving the human condition, including standards of living and the quality of life and the health, education and employment of the population, especially of low-income and vulnerable groups of the population.

11. The right to choose any economic, social and cultural system and economic development models.

12. Non-interference in the internal political affairs of States.

13. Non-discrimination.

14. Sovereignty of States over their natural resources.

15. The need for international cooperation.

16. Non-use of food as a tool for political pressure.

2. Principles not contained in any international instrument or declaration, discussed by the working group

17. Both the borrowing countries and the international financial institutions should bear in mind human rights dimensions (aspects) in their negotiations on structural adjustment programmes.

18. International financial institutions should adopt a more flexible approach in negotiations with borrowing countries, taking into account not only macroeconomic but social indicators as well, both at the national and regional levels.

19. In the event of privatization, emphasis should be given to the need to create a private sector indigenous to the country concerned. This is important as the prevailing view is that the private sector should be the main engine of economic growth. The creation of market conditions through privatization can, in most cases, lead to a substantial reduction in the wastage of resources and enhance resource allocation through the price mechanism. However, it must be recognized that the poor must be accommodated in one way or another. In this connection, it is essential for the Government to develop an incentive structure to enable the private sector to contribute towards these social initiatives. It is also pertinent to note that an indigenous private sector would be more responsive to both market and social signals.

20. Connected to this, one way to facilitate the creation of an indigenous private sector is to create an enabling environment for the informal sector to develop unhindered, especially those entrepreneurial activities which are

legally and morally acceptable. It has been observed that in periods of economic crisis, the informal sector takes on an active role and therefore has the capacity to promote overall welfare gains for a large section of the population.

3. Principles not discussed in depth by the working group owing to lack of time (to be considered by the working group at its next session)

21. Structural adjustment policies must be in conformity with the provision of article 28 of the Universal Declaration of Human Rights, which states: "Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized".

22. The policies of the World Bank and IMF must be brought into line with international human rights standards and the structures of the two institutions must be democratized and made subject to monitoring and guidance by the Economic and Social Council and the General Assembly, in conformity with Articles 57, 58 and 63 of the Charter of the United Nations.

23. Establishment of fair prices in the international market for raw materials and manufactures from the developing countries and the opening up of markets of the wealthy countries to these materials and products.

24. International financing institutions should effectively play their roles as development financing banks without discrimination on account of the political or economic system of any member country, assistance being untied.

25. Economic growth and development in developing countries should be revived and the political and social costs of structural adjustment programmes should be reduced to guarantee the necessary conditions for the full enjoyment of all human rights.

26. Equality in international economic relations.

27. Non-use of economic, political, social and cultural embargos as a tool for political pressure.

B. Policy guidelines for action at the national level given the conditions imposed by the international financial institutions* based on a working paper prepared by Asian delegations participating in the Working Group

1. National policies discussed by the Working Group

(a) Popular participation

28. Legislative and regulatory frameworks, institutional arrangements and consultative mechanisms should be established to ensure the effective

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* One delegation was of the view that the words "Given the conditions imposed by the international financial institutions" should be deleted.

participation of all the elements of society in the formulation, planning, implementation and evaluation of national strategies, policies and programmes of economic and social development, as well as in the monitoring and supervision of their implementation.

29. States should encourage creative initiative under conditions of enlightened public opinion. States should simplify administrative regulations, disseminating information about public policy issues and initiatives for collective interests, and facilitating maximum access to information.

30. States should ensure greater transparency in negotiations and agreements between States, including the publication and widest possible dissemination of proposed and final agreements concerning financial aid, debt repayment and monetary policy.

(b) Equal opportunity and equal access to productive resources

31. States should analyse policies and programmes, including those relating to macroeconomic stability, structural adjustment programmes, taxation, investments, employment, markets and all relevant sectors of the economy, with respect to their impact on poverty and inequality, employment and social development, and assess their impact on family well-being and conditions, as well as their gender implications, and adjust them, as appropriate, to promote a more equitable distribution of productive assets, wealth, opportunities, income and services.

32. States should ensure, inter alia, equality of opportunity for all in their access to basic resources, education, health services, food, housing, employment and the fair distribution of income.

33. States should ensure that education and training programmes respond to changes in the economy, provide full and equal access to training opportunities and secure the access of women to training programmes.

34. States should safeguard and promote respect for basic workers' rights, including the prohibition of forced labour and child labour, equal remuneration for men and women for work of equal value, and non-discrimination in employment, fully implementing the conventions of the International Labour Organization if they are parties to those conventions and taking into account the principles embodied in those conventions if they are not, to thus achieve truly sustained economic growth and sustainable development.

35. States should promote democratically-based social and institutional reforms and motivation for change basic to the elimination of all forms of discrimination and exploitation and conducive to high rates of economic and social progress.

(c) Equal access to social services

36. While special attention must be paid to the question of targeted public expenditure for the poor and to social safety nets, general economic policies should be designed in a way which would reduce the need for such measures.

2. National policies not discussed by the Working Group owing to lack of time (to be considered by the Working Group at its next session)

37. Creation of fiscal and credit incentives for microenterprises and for small and medium-sized firms.

38. Ensuring the regulatory role of States in implementing economic development and social investment policies.

39. Orientation of wage policy towards a fairer distribution of the national product, and of social security policy towards full coverage of situations of unemployment, disability and illness, dependency allowances and old-age pensions.

C. Policy guidelines for action at the international level

Working paper prepared by the African delegations participating in the Working Group: not discussed owing to lack of time (to be considered at its next session)

1. Conditionality or any kind of external pressure or intervention in the internal or external affairs of a State

40. Every State has the sovereign and inalienable right to choose its economic system as well as its political, social and cultural systems in accordance with the will of its people, without outside interference, coercion or threat in any form whatsoever. 1/

41. No State or group of States has the right to intervene, directly or indirectly, for any reason whatever, in the internal or external affairs of any other State. 2/

42. The right of every country to adopt the economic and social system that it deems the most appropriate for its own development and not be subjected to discrimination of any kind as a result. 3/

43. All peoples have the right freely to determine, without external interference, their political status and to pursue their economic, social and cultural development, and every State has the duty to respect this right in accordance with the provisions of the Charter. 4/

44. All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic cooperation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence. 5/

45. Full permanent sovereignty of every State over its natural resources and all economic activities. In order to safeguard these resources, each State is entitled to exercise effective control over them and their exploitation with means suitable to its own situation, including the right to nationalization or transfer of ownership to its nationals, this right being an expression of the full permanent sovereignty of the State. No State may be subjected to economic, political or any other type of coercion to prevent the free and full exercise of this inalienable right. 6/

46. Every country has the sovereign right freely to dispose of its natural resources in the interest of the economic development and well-being of its own people; any external, political or economic measures or pressures brought to bear on the exercise of this right is a flagrant violation of the principles of self-determination of peoples and non-intervention, as set forth in the Charter of the United Nations and, if pursued, could constitute a threat to international peace and security. 7/

47. States have the duty to cooperate with one another, irrespective of the differences in their political, economic and social systems, in the various spheres of international relations, in order to maintain international peace and security and to promote international economic stability and progress, the general welfare of nations and international cooperation free from discrimination based on such differences. 8/

48. All States have the duty to conduct their mutual economic relations in a manner which takes into account the interests of other countries. In particular, all States should avoid prejudicing the interests of developing countries. 9/

49. States shall conduct their international relations in the economic, social, cultural, technical and trade fields in accordance with the principles of sovereign equality and non-intervention. 10/

50. Every State should cooperate with the efforts of developing countries to accelerate their economic and social development by providing favourable external conditions and by extending active assistance to them, consistent with their development needs and objectives, with strict respect for the sovereign equality of States and free of any conditions derogating from their sovereignty. 11/

51. Economic and financial agreements between the developed and the developing countries must be based on the principle of equality and of the right of peoples and nations to self-determination. 12/

52. No State may use or encourage the use of economic, political or any other type of measures to coerce another State in order to obtain from it the subordination of the exercise of its sovereign rights and to secure from it

advantages of any kind. 13/ Such measures include economic pressure designed to influence the policy of another country or to obtain control of essential sectors of its national economy. Aid and technical assistance can serve to cloak interference in the domestic affairs of other States. Their use for that purpose would constitute a form of intervention. 14/

53. Extension of active assistance to developing countries should be guaranteed by the whole international community, free of any political or military conditions. 15/

54. The provision of economic and technical assistance, loans and increased foreign investment must not be subject to conditions which conflict with the interests of the recipient State. 16/

55. There should be a general easing of the terms of lending to the developing countries through low interest rates on loans and long grace periods for the repayment of loans, and an assurance that the allocation of such loans will be based strictly on socio-economic criteria free of any political considerations. 17/

56. In cases where authorization is granted, the capital imported and the earnings on that capital shall be governed by the terms thereof, by the national legislation in force, and by international law. The profits derived must be shared in the proportions freely agreed upon, in each case, between the investors and the recipient State, due care being taken to ensure that there is no impairment, for any reason, of that State's sovereignty over its natural wealth and resources. 18/

57. The development of natural resources which can be utilized for the domestic needs of the underdeveloped countries and also for the needs of international trade, provided that such commercial agreements shall not contain economic or political conditions violating the sovereign rights of the underdeveloped countries, including the right to determine their own plans for economic development. 19/

58. Economic relations between countries, including trade relations, shall be based on respect for the principle of sovereign equality of States, self-determination of peoples, and non-interference in the internal affairs of other countries. 20/

59. Every State has the right to engage in international trade and other forms of economic cooperation irrespective of any differences in political, economic and social systems. No State shall be subjected to discrimination of any kind based solely on such differences. 21/

60. States should refrain from any unilateral measures not in accordance with international law and the Charter of the United Nations that creates obstacles to trade relations among States and impedes the full realization of the human rights set forth in the Universal Declaration of Human Rights and international human rights instruments, in particular the right of everyone to a standard of living adequate for their health and well-being, including food and medical care, housing and the necessary social services. 22/

61. Food should not be used as a tool for political pressure. 23/

62. Technical cooperation should not be used to impose models of economic development on a recipient country if those models do not fully take into account the policy framework and development strategies of that country. 24/

63. Each State has the right to regulate and exercise authority over foreign investment within its national jurisdiction in accordance with its laws and regulations and in conformity with its national objectives and priorities. No State shall be compelled to grant preferential treatment to foreign investments. 25/

64. Every State has the right to regulate and supervise the activities of transnational corporations within its national jurisdiction and take measures to ensure that such activities comply with its laws, rules and regulations and conform with its economic and social policies. Transnational corporations shall not intervene in the internal affairs of a host State. Every State should, with full regard for its sovereign rights, cooperate with other States in the exercise of the right set forth in this subparagraph. 26/

65. States should achieve food security by ensuring a safe and nutritionally adequate food supply, at both the national and international levels, a reasonable degree of stability in the supply of food, as well as a physical, social and economic access to enough food for all, while reaffirming that food should not be used as a tool for political pressure. 27/

66. International financing institutions should effectively play their role as development financing banks without discrimination on account of the political or economic system of any member country, assistance being untied. 28/

Availability of external resources

67. States should pursue internal and external economic policies designed to accelerate growth throughout the world, and in particular to help promote, in developing countries, a rate of growth consistent with the need to bring about a substantial and steady increase in average income. 29/

68. More appropriate conditions should be established for a balanced exchange of resources between North and South. There is a need for greater transfers internationally as well as a redirection of current resources. 30/

69. All States should respond to the generally recognized or mutually agreed development needs and objectives of developing countries by promoting increased net flows of real resources to the developing countries from all sources. 31/

Foreign debt

70. Any foreign debt strategy must be designed not to hamper the steady improvement of conditions guaranteeing the enjoyment of human rights and must be intended, inter alia, to ensure that debtor developing countries achieve an adequate growth level to meet their social and economic needs and their development requirements. 32/

71. The alleviation of debt and debt-service burdens of developing countries with debt problems should take place in the framework of the realization of economic, social and cultural rights. 33/

72. The new strategies for solving the debt problem, of both official and private origin, require policies of economic adjustment accompanied by growth and development. It is essential, within those policies, to give priority consideration in their implementation to human conditions, including standards of living, health, food, education and employment of the population, especially among the most vulnerable and low-income groups. 34/

73. Debt payments should not take precedence over the basic rights of the people of debtor countries to food, shelter, clothing, employment, health services and a healthy environment. 35/

74. Measures should be adopted to substantially reduce the bilateral debts of the least developed countries, in particular the countries of Africa, as soon as possible. 36/

75. Creditor countries and multilateral financial institutions should continue to extend concessional financial assistance in order to support the implementation by the developing countries of their economic reform programmes. 37/

External trade

76. Assistance should be provided to monitor the impact of trade liberalization on progress made in developing countries to meet basic human needs, giving particular attention to new initiatives to expand the access of developing countries to international markets. 38/

77. Efforts should be made to ensure that developing countries do not lag behind as a result of new rules governing international trade relations. 39/

Transnational corporations

78. States should eliminate all forms of foreign economic exploitation, particularly that practised by international monopolies, in order to enable the people of every country to enjoy in full the benefits of their national resources. 40/

79. All efforts should be made to formulate, adopt and implement an international code of conduct for transnational corporations: (a) to prevent interference in the internal affairs of the countries where they operate; (b) to regulate their activities in host countries, to eliminate restrictive business practices and to conform to the national development plans and objectives of countries, and in this context facilitate, as necessary, the review and revision of previously concluded arrangements; (c) to bring about assistance, transfer of technology and management skills to developing countries on equitable and favourable terms; (d) to regulate repatriation of the profits accruing from their operations, taking into account the legitimate interests of all parties concerned; (e) to promote reinvestment of their profits in developing countries. 41/

Development assistance

80. The necessary level of financial and other resources should be provided, sufficient to attain the goals set by appropriately designed adjustment packages. 42/

81. Existing policies of development assistance should be continuously examined with a view to expanding the proportion of development assistance committed to human priority areas and social sectors. 43/

82. Technical, financial and material assistance, both bilateral and multilateral, should be provided to the developing countries, to the fullest possible extent and on favourable conditions, to facilitate the direct exploitation of their national resources and natural wealth by those countries with a view to enabling the peoples of those countries to benefit fully from their national resources. The coordination of international assistance should be improved for the achievement of the social objectives of national development plans. 44/

83. Measures should be taken to provide technical assistance and expanded transfer of technology to developing countries to integrate technology and employment policies with other social objectives, and to establish and strengthen national and local technology institutions. 45/

84. Assistance should be provided for social-sector activities, such as the rehabilitation and development of social infrastructure, including in the form of grants or soft loans. 46/

85. Assistance should be provided to countries to strengthen or rebuild their capacities for formulating, coordinating, implementing and monitoring integrated strategies for social development. 47/

86. Government policies and programmes to promote social development should be enhanced by strengthening the coordination of all efforts by national and international actors, strengthening the efficiency and operational capacity of public management structures, and facilitating the effective and transparent use of resources, taking due account of the recommendations and follow-up to Agenda 21. 48/

87. Preference should be given, wherever possible, to the utilization of competent national experts or, where necessary, competent experts from within the subregion or region or from developing countries in project and programme design, preparation and implementation, and to the building of local expertise where it does not exist. 49/

88. Official development assistance should be increased, both in total and for social programmes and improving its impact, consistent with countries' economic circumstances and capabilities to assist, and consistent with commitments in international agreements, and striving to attain the agreed upon target of 0.7 per cent and of gross national production for official development assistance and 0.15 per cent to the least developed countries, as soon as possible. 50/

Adjustment in developed countries

89. Developed countries should assist the developing countries in their efforts to speed up their economic and social progress, should cooperate in measures taken by developing countries for diversifying their economies, and should encourage appropriate adjustments in their own economies to this end. 51/

90. Developed countries should undertake an objective and critical examination of their present policies and make appropriate changes in such policies so as to facilitate the expansion and diversification of imports from developing countries and thereby make possible international economic relations on a rational, just and equitable basis. 52/

91. In order to facilitate market access, particularly in the areas of interest to developing countries, developed countries should undertake appropriate structural adjustment in their own economies. It is urgent to achieve an improvement in market access conditions for commodities, notably through the progressive removal of barriers that restrict imports, particularly from developing countries, of commodity products in primary and processed forms, as well as the substantial and progressive reduction of types of support that induce uncompetitive production, such as production and export subsidies. 53/

International institutions

92. The appropriate United Nations bodies and specialized agencies should take into account the need to achieve social justice for all when considering social development issues and observance of human rights. 54/

93. Measures should be taken to ensure coordination within the United Nations system in order to develop a comprehensive approach to developmental social welfare, including integrated and mutually supportive economic and social development policies, focused on the achievement of social justice. 55/

94. Care should be taken to avoid dissociating the economic and monetary aspects of development from its social aspects and to enhance the dialogue between international social and humanitarian agencies and international institutions responsible for financial and trade questions. 56/

95. The balance must be preserved between economic and social development. The concepts contained in the Declaration on the Right to Development must form, within their areas of competence, an integral part of the policies and programmes of all United Nations bodies and agencies, including the Bretton Woods institutions and the World Trade Organization. 57/

96. States should ensure that the World Bank, the International Monetary Fund, the regional and subregional development banks and funds, and other international finance organizations further integrate social development goals in their policies, programmes and operations, including by giving higher priority to social-sector lending, where applicable, in their lending programmes. 58/

97. States, in cooperation with international financial institutions and other international organizations, should protect basic social programmes and expenditures, in particular those affecting the poor and vulnerable segments of society, from budget reductions. 59/

98. States, in cooperation with international and regional financial and development institutions and other international organizations, should review the impact of their policies and programmes, including structural adjustment programmes, on the enjoyment of human rights and on social development by means of gender-sensitive social-impact assessments and other relevant methods, and develop policies to reduce their negative effects and improve their positive impact. 60/

99. States, in cooperation with international financial institutions and other international organizations, should further promote policies enabling small enterprises, cooperatives and other micro-enterprises to develop their capacities for income generation and employment creation. 61/

100. Urgent and effective measures should be taken to review the lending policies of international financial institutions, taking into account the special situation of each developing country, to suit urgent needs, and to improve the practices of these institutions in regard to, inter alia, development financing and international monetary problems. 62/

101. States should pursue the coordination of macroeconomic policies so that they are mutually reinforcing and conducive to broad-based and sustained economic growth and sustainable development, as well as substantial increases in productive employment expansion and a decline in unemployment worldwide. 63/

102. States should cooperate in creating an enabling international economic and political environment, in particular through the democratization of decision-making in intergovernmental bodies and institutions that deal with trade, monetary policy, and development assistance, and by means of greater international partnership in the fields of research, technical assistance, finance and investment. 64/

103. All efforts should be made to reform the international monetary system with, inter alia, the following objectives:

(a) Measures to check the inflation already experienced by the developed countries to prevent it from being transferred to developing countries, and to study and devise possible arrangements within the International Monetary Fund to mitigate the efforts of inflation in developed countries on the economies of developing countries; 65/

(b) Measures to eliminate the instability of the international monetary system, in particular the uncertainty of the exchange rates, especially as it affects adversely the trade in commodities; 66/

(c) Maintenance of the real value of the currency reserves of the developing countries by preventing their erosion from inflation and exchange rate depreciation of reserve currencies; 67/

(d) There should be full and effective participation of developing countries in all phases of decision-making for the formulation of an equitable and durable monetary system and adequate participation of developing countries in all bodies entrusted with this reform and, particularly, in the Council of Governors of the International Monetary Fund; 68/

(e) There should be a review by the International Monetary Fund of the relevant provisions in order to ensure effective participation by developing countries in the decision-making process; 69/

(f) There should be more effective participation by developing countries, whether recipients or contributors, in the decision-making process in the competent organs of the World Bank and the International Development Association, through the establishment of a more equitable pattern of voting rights. 70/

104. The World Bank should be encouraged to strengthen and further develop its policies relating to poverty reduction and policies intended to address the social aspects of adjustment. In this context, the World Bank should be sensitive to the pronouncements of the human rights bodies of the United Nations and should gradually incorporate human rights criteria in its work at all stages, including in project and policy lending, preparation of policy guidelines, as well as in project and policy appraisal, monitoring and assessment. 71/

105. Other bodies of the United Nations system, including the international financial institutions, should increase their participation in the meetings of human rights bodies, including treaty monitoring bodies. 72/

106. The Commission on Human Rights and the Economic and Social Council should encourage and stimulate non-governmental organizations engaged in development issues in the field to participate actively in the human rights bodies. 73/

107. International non-governmental organizations should be encouraged to increase their contributions to the United Nations organs dealing with economic, social and cultural rights, in terms of information and detailed analyses of the degree to which economic, social and cultural rights are realized in different settings. Such analyses should provide insight into the different problems of the realization of economic, social and cultural rights and the root causes of these problems. 74/

Notes

1/ Charter of Economic Rights and Duties of States, art. 1. See also Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations (General Assembly resolution 2625 (XXV)).

2/ Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations.

3/ Declaration on the Establishment of a New International Economic Order (General Assembly resolution 3201 (S-VI)), para. 4 (d).

4/ Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations. See also common art. 1 (1), International Covenants on Economic, Social and Cultural Rights and on Civil and Political Rights, General Assembly resolution 1514 (XV) and Security Council resolution 183 (1963).

5/ International Covenants on Economic, Social and Cultural Rights and on Civil and Political Rights, common art. 1 (2).

6/ Declaration on the Establishment of a New International Economic Order, para. 4 (c).

7/ UNCTAD resolution 46 (III), 1972, Proceedings of the United Nations Conference on Trade and Development, Third Session, Vol. 1, Report and Annexes (United Nations publication, Sales No. E.73.II.D.4), annex I, A., pp. 59-60.

8/ Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations.

9/ Charter of Economic Rights and Duties of States, art. 24.

10/ Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations.

11/ Charter of Economic Rights and Duties of States, art. 17.

12/ General Assembly resolution 1803 (XVII), seventh preambular para.

13/ Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations; General Assembly resolutions 2131 (XX), para. 2; 2625 (XXV) and 3281 (XXIX), 1974; Charter of Economic Rights and Duties of States, art. 32.

14/ Aureliu Cristescu, The Right to Self-Determination: Historical and Current Development on the Basis of United Nations Instruments, (United Nations publication, Sales No. E.80.XIV.3), para. 538.

15/ Declaration on the Establishment of a New International Economic Order, para. 4 (k).

16/ General Assembly resolution 1803 (XVII) eighth preambular para.

17/ Declaration on Social Progress and Development, art. 23 (b).

18/ General Assembly resolution 1803 (XVII), para. 3.

19/ General Assembly resolution 523 (VI), 1952, ... (ii).

20/ First session of United Nations Conference on Trade and Development, 1964, General Principle One, Proceedings of the United Nations Conference on Trade and Development, Vol. 1, Final Act and Report (United Nations publication, Sales No. 64.II.B.11), pp. 18-21.

21/ Charter of Economic Rights and Duties of States, art. 4.

22/ Vienna Declaration and Programme of Action, Part I, para. 31. See also Copenhagen Declaration and Programme of Action, Part Two, para. 9 (e).

23/ Ibid.

24/ Report of the Working Group on the Right to Development on its third session, op. cit., para. 83.

25/ Charter of Economic Rights and Duties of States, art. 2 (2) (a).

26/ Ibid., art. 2 (2) (b).

27/ Copenhagen Declaration and Programme of Action, Part Two, para. 36 (e).

28/ Programme of Action on the New International Economic Order, II, 2 (b).

29/ First session of UNCTAD, General Principle Four, op. cit.

30/ Report of the Working Group on the Right to Development on its third session, (E/CN.4/1995/27), para. 96.

31/ Charter of Economic Rights and Duties of States, art. 22 (1).

32/ Commission on Human Rights resolution 1989/21, para. 1.

33/ Commission on Human Rights resolutions 1993/12, 1994/11 and 1995/13.

34/ Commission on Human Rights resolutions 1992/9, 1993/12, 1994/11 and 1995/13.

35/ Commission on Human Rights resolutions 1993/12, 1994/11 and 1995/13.

36/ Copenhagen Declaration and Programme of Action, Part Two, para. 90 (b).

37/ Commission on Human Rights resolution 1995/13.

38/ Copenhagen Declaration and Programme of Action, Part Two, para. 88 (b).

39/ Report of the Working Group on the Right to Development on its second session, E/CN.4/1995/11, para. 91.

40/ Declaration on Social Progress and Development, art. 12 (c).

41/ Programme of Action on the Establishment of a New International Economic Order.

42/ Türk, Final report, on the realization of economic, social and cultural rights, E/CN.4/Sub.2/1992/16, para. 196 (d).

43/ Ibid., para. 230.

44/ Declaration on Social Progress and Development, art. 23 (c) and (d).

45/ Copenhagen Declaration and Programme of Action, Part Two, para. 50 (d).

46/ Universal Declaration on the Eradication of Hunger and Malnutrition, para. 88 (e).

47/ Ibid., para. 84 (a).

48/ Ibid., para. 83 (b).

49/ Ibid., para. 88 (h).

50/ Ibid., para. 11 (h).

51/ First session of UNCTAD, General Principle Five, op. cit.

52/ Lima Declaration and Plan of Action, on Industrial Development and Cooperation, Second General Conference of UNIDO, 1975. See also Programme of Action on the Establishment of a New International Economic Order, para. 3 (a) (vii).

53/ Report of the United Nations Conference on Environment and Development, (E/CONF.151/26/Rev.1), vol. I, 1992, para. 2.12.

54/ Economic and Social Council resolution 1989/71, para. 3.

55/ Economic and Social Council resolutions 1988/46 and 1989/71.

56/ Report of the Working Group on the Right to Development on its second session, op. cit., para. 88.

57/ Report of the Working Group on the Right to Development on its third session, (E/CN.4/1995/27), para. 58.

58/ Copenhagen Declaration and Programme of Action, Part Two, para. 92 (a).

59/ Copenhagen Declaration and Programme of Action, Part Two, para. 91 (a).

60/ Ibid., paras. 91 (b) and 92 (c) and Vienna Declaration and Programme of Action, Part II, para. 2.

61/ Copenhagen Declaration and Programme of Action, Part Two, para. 91 (c).

62/ Programme of Action on the Establishment of a New International Economic Order, IX, 5.

63/ Copenhagen Declaration and Programme of Action, Part Two, para. 49 (a).

64/ Report of the Global Consultation on the Right to Development as a Human Right, (Geneva, January 1990) (HR/PUB/91/2), para. 187.

65/ Programme of Action on the New International Economic Order, II, 1 (a).

66/ Ibid., II, 1 (b).

67/ Ibid., II, 1 (c).

68/ Ibid., II, 1 (d).

69/ Ibid., II, 1 (g).

70/ Ibid., II, 2 (c).

71/ Türk, Final report on the realization of economic, social and cultural rights, E/CN.4/Sub.2/1992/16, para. 231.

72/ Commission on Human Rights resolution 1994/20.

73/ Report of the Working Group on the Right to Development on its third session, op. cit., para. 89.

74/ Türk, Final report, op. cit., para. 244.

Annex II

DOCUMENTS MADE AVAILABLE DURING THE SESSION

Symbol	Title
E/CN.4/1997/WG.17/1	Provisional agenda
E/CN.4/Sub.2/1995/10	Preliminary set of basic policy guidelines on structural adjustment programmes and economic, social and cultural rights: report of the Secretary-General prepared in pursuance of resolution 1994/37
E/CN.4/1997/WG.17/2	Compilation of comments on the preliminary set of basic policy guidelines: note by the Secretariat
E/CN.4/Sub.2/1991/17	Realization of economic, social and cultural rights: second progress report prepared by Mr. Danilo Türk, Special Rapporteur
E/CN.4/Sub.2/1992/16	Realization of economic, social and cultural rights: final report submitted by Mr. Danilo Türk, Special Rapporteur
E/CN.4/1994/21	Report of the Working Group on the Right to Development on its first session
E/CN.4/Sub.2/1995/25	Report of the Secretary-General prepared in pursuance of Commission on Human Rights resolution 1994/11
E/CN.4/1995/11	Report of the Working Group on the Right to Development on its second session
E/CN.4/1995/27	Report of the Working Group on the Right to Development on its third session
E/CN.4/Sub.2/1995/11	The relationship between the enjoyment of human rights, in particular international labour and trade union rights, and the working methods and activities of transnational corporations: background document prepared by the Secretary-General
Sub-Commission resolution 1995/32	Effects on the full enjoyment of human rights of structural adjustment programmes
E/CN.4/1996/10	Report of the Working Group on the Right to Development on its fourth session

E/CN.4/1996/22	Ways and means to carry out a political dialogue between creditor and debtor countries in the United Nations system, based on the principle of shared responsibility: report of the Secretary-General
E/CN.4/1996/24	Report of the Working Group on the Right to Development on its fifth session
E/CN.4/Sub.2/1996/12	The impact of the activities and working methods of transnational corporations on the full enjoyment of all human rights, in particular economic, social and cultural rights and the right to development, bearing in mind existing international guidelines, rules and standards relating to the subject-matter: report of the Secretary-General

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